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SUBCOMMITTEE ON SOCIAL SECURITY
HEARING ON THE CHALLENGES ACHIEVING FAIR AND CONSISTENT DISABILITY DECISIONS
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(REMARKS AS PREPARED)

Good morning. Fairness and consistency are essential to ensuring Americans' confidence in Social Security's disability insurance program. Their importance has been consistently recognized since the disability program was created in 1956.

As we know, Social Security's definition of who is disabled is a strict one. Whether someone is disabled depends on medical evidence and whether a severe physical or mental condition, referred to in the program as "an impairment," prevents someone from working. But for some conditions, there are also subjective criteria, based in statute, that affect the way the definition is applied. In these cases making the final decision on whether an individual is disabled is as much an art as a science.

In the early 1980s there was growing public concern about the increasing number of statutorily required continuing disability reviews that removed thousands of people from the rolls.

In response, Federal courts all over the country began to step in to stem the tide of benefit terminations by requiring the use of a medical improvement standard in making the decision to terminate benefits. The courts also issued orders requiring the Secretary to apply particular standards for evaluating disability on a Statewide or circuit wide basis.

Soon after, Congress passed the Disability Benefits Reform Act of 1984, which added several new criteria that increased the importance of subjective evaluations in deciding whether someone was disabled and codified the medical improvement standard against which medical reviews would be conducted.

According to the Congressional Budget Office, the 1984 Act "shifted the criteria for disability insurance eligibility from a list of specific impairments to a more general consideration of a person's medical condition and ability to work."

The amendments allowed applicants to qualify for benefits on the basis of the combined effect of medical conditions, each of which alone might not have resulted in a decision that the individual was disabled. The amendments also allowed symptoms of mental illness and pain to

be considered, even in the absence of a clear-cut medical diagnosis, and revised mental impairment criteria in the Listing of Impairments.

It's very clear that our colleagues in the 98th Congress were anxious about Social Security's actions and the increasing inconsistencies caused by so many different circuit court decisions.

Their concern, clearly stated in conference, was to preserve the consistency and uniformity of this national program in the way it served those who were truly disabled. What our colleagues did not foresee was that easing the criteria would contribute to growing the disability insurance rolls, including increasing the number of younger workers on the rolls.

Today, those with mental and musculoskeletal disorders have grown to 60 percent of the rolls, and those assessments are usually based on the more subjective steps of the evaluation process.

The other result of the 1984 Act, and one our colleagues clearly did not intend, are the substantial variations among decision makers in the same offices, in the same regions, and at different decision levels. That means two decision makers can review the case and make a different decision and yet be right.

So I might look at a claimant's file and decide that the person is entitled to benefits. My colleague, Mr. Becerra, could look at the same file and decide the person is not entitled to benefits. And as you'll hear today, we could both be right under the agency's complex policies.

If that sounds to you as though an award of benefits may come down to who is making the decision, you're right.

It shouldn't surprise anyone that claimant representatives – those who represent individuals applying for disability -- have figured this out. The Supreme Court said this system for deciding disability was meant to be simple enough for the average person to understand.

Yet, over the last twenty years individuals applying for disability have gone from being represented 10 percent of the time to over 80 percent of the time.

Most claimant representatives are well-intentioned and want to do their best, but they are quick to take advantage of confusing and complex policies to try to ensure an award.

Their behavior underscores how far this process has moved away from a national program with uniform rules to one that is about who makes the decision. And they've been very successful at it – last year the representative industry pulled in over $1 billion from the back payments of those who need these funds the most.

Another indicator that the rules aren't as hard and fast and consistent as a national program should be is the fact that we have folks who are trying to cheat the system. Close to half of the State Disability Determination Services have access to Cooperative Disability

Investigation Units who investigate suspicious applications, and, as result of their efforts, stop crooks from getting on the rolls.

That leaves examiners in half the country with no way of proving whether their suspicions are right or not.

Social Security can't know the number of people who are receiving benefits who don't deserve them. Yet increasingly our constituents tell us they know someone who is receiving benefits, but shouldn't. That undermines the public's confidence in the program, the agency, and this body.

Further, the bipartisan independent Social Security Advisory Board has been shining a bright light on these issues since 1998. Since then, they have issued 7 reports and several data updates repeatedly raising concerns about how the program operates and the fairness and consistency of the process.

In its February 2012 update to *Aspects of Disability Decision-Making: Data and Materials*, the Board states that updated data continue to highlight significant questions about Social Security's disability decision making process and about the disability program, listing ongoing inconsistencies in decision making, the large gap between policy and administrative feasibility, continued use of the outdated Dictionary of Occupational Titles, the definition of disability, and the need for an in-depth assessment of the disability decision making process among its concerns.

My number one priority in holding these hearings is to make sure we keep this program strong for those who need it. And that means taking a good and hard look at what may not be working, assessing options for changes, and taking action.

I thank our witnesses for being here today and I look forward to hearing their testimony.